

DRAFT - Post-Transition IANA Conflicts of Interest Policy

~~(Adopted on 6 May 2012)~~

ARTICLE I -- PURPOSE AND ADMINISTRATION

Section 1.1. ~~Internet Corporation for Assigned Names and Numbers ("ICANN")~~ Post-Transition IANA ("PTI") is committed to the highest levels of integrity. Covered Persons are expected to conduct their relationships with each other, ICANN PTI and outside organizations with objectivity and honesty. Covered Persons are obligated to disclose ethical, legal, financial and other Conflicts of Interest involving ICANN PTI and remove themselves from a position of decision-making authority with respect to any Conflict of Interest involving ICANN PTI. The purpose of this ~~Board~~ Conflicts of Interest Policy (~~"COI Policy"~~) is to prevent any Conflict of Interest or the appearance of a Conflict of Interest from affecting any decision-making involving ICANN PTI, to ensure that the deliberations and decisions of ICANN PTI are made solely in the interests of the global Internet community, as a whole, and to protect ICANN's PTI's interests when ICANN PTI is contemplating entering into a transaction, contract or arrangement or approving a policy, program or other matter that might benefit the personal interests of a Covered Person.

Section 1.2. A Covered Person may not use his or her position with respect to ICANN PTI, or confidential corporate information obtained by him or her relating to ICANN PTI, in order to achieve a financial or other benefit for himself or herself or for a third person, including another nonprofit or charitable organization.

Section 1.3. This COI Policy is intended to supplement but not to replace any applicable laws governing conflicts of interest applicable to ICANN PTI.

~~Section 1.4. ICANN will encourage Supporting Organizations and Advisory Committees and other ICANN related bodies, as appropriate, to consider implementing the principles and practices of this COI Policy as relevant.~~

Section 1.5 ~~1.4.~~ ~~The~~ PTI's ~~Board Governance Committee (together with any subcommittee thereof established by the~~ of Directors (the "Board, the "Committee") shall administer and monitor compliance with this COI Policy in accordance with the terms contained herein.

Section 1.6 ~~1.5.~~ Certain capitalized terms used in this COI Policy shall have the meanings set forth in Article VII of this COI Policy.

ARTICLE II -- PROCEDURES REGARDING CONFLICTS OF INTEREST

Section 2.1. Duty to Disclose.

- (a) In connection with any proposed transaction, contract, arrangement, policy, program or other matter being considered by ICANN PTI, a Covered Person shall promptly disclose the existence of any Potential Direct Conflict that may give rise

to a Conflict of Interest with respect to the proposed transaction, contract, arrangement, policy, program or other matter. Such disclosure shall be made to the ~~Office of the General Counsel~~Secretary setting forth, in writing, all relevant facts relating to the Potential Direct Conflict. When in doubt, Interested Persons shall disclose matters as Potential Direct Conflicts.

(b) Potential Perceived Conflicts can be seriously damaging to the multi-stakeholder ~~community's~~community's confidence in ICANNPTI. A Covered Person shall promptly disclose the existence of any Potential Perceived Conflict, which shall be treated as equivalent to a Potential Direct Conflict until such time as the doubt is removed and the matter is determined after investigation of all the relevant facts in accordance with this COI Policy. When in doubt, Interested Persons shall disclose matters as Potential Perceived Conflicts and disclose all relevant facts relating to the Potential Perceived Conflict to the ~~Office of the General Counsel~~Secretary.

(c) If any Covered Person has reason to believe that another Covered Person has a Potential Conflict, the Covered Person with such belief shall inform the ~~Office of the General Counsel~~Secretary, including disclosing all relevant facts relating thereto.

(d) The Interested Person shall provide the ~~Office of the General Counsel~~Secretary with an updated Statement (as provided for in Article V below) at the time any disclosure is made pursuant to this Section 2.1. The disclosure to the ~~Office of the General Counsel~~Secretary of a Potential Conflict shall be made promptly and pursuant to such procedures as the Board ~~or the Committee~~ may establish from time to time.

Section 2.2. Determining Whether a Conflict of Interest Exists.

(a) After disclosure of a Potential Conflict by an Interested Person, the ~~Office of the General Counsel~~Secretary will promptly inform the ~~Committee~~Board of the Potential Conflict and provide the ~~Committee~~Board with all information provided by the Interested Person related thereto. At the discretion of the Disinterested ~~members of the Committee~~Directors, the Interested Person may present further information regarding, or otherwise discuss with such ~~members~~Disinterested Directors, the Potential Conflict.

(b) Thereafter, in the absence of the Interested Person, the Disinterested ~~members of the Committee~~Directors shall determine, by a majority of the Disinterested Directors, whether or not the circumstances disclosed by the Interested Person regarding the Potential Conflict constitute a Conflict of Interest, ~~and, subject to a contrary finding by a majority of~~ The determination by the Disinterested Directors, ~~the determination by Disinterested members of the Committee~~ in this regard is conclusive and may not be challenged by the Interested Person. Such determination shall be recorded pursuant to Section 3.1 hereof. ~~If the Interested~~

~~Person is a Director or Board Liaison, such determination shall be subject to ratification by, and reported to, the Disinterested Directors at the next Board meeting and prior to the Disinterested Directors approving or adopting, as applicable, the transaction, contract, arrangement, policy, program or other matter giving rise to such Potential Conflict.~~

Section 2.3. Procedures for Addressing a Conflict of Interest.

(a) If the Disinterested ~~members of the Committee~~Directors determine that a Conflict of Interest exists, the Conflicted Person may make a presentation to the Disinterested ~~members of the Committee~~Directors regarding the Conflict of Interest. After any such presentation, subject to Section 2.4(d), the Conflicted Person shall leave the meeting and shall not be present during any discussion of the Conflict of Interest.

(b) The Chair of the ~~Committee~~Board (if Disinterested) or a majority of the Disinterested ~~members of the Committee~~Directors, shall, if appropriate, appoint a Disinterested person or committee to investigate alternatives or modifications, as applicable, to the proposed transaction, contract, arrangement, policy, program or other matter. If the Conflicted Person is a Director ~~or Board Liaison~~, the findings shall be reported to the Disinterested Directors at the next Board meeting and prior to the Disinterested Directors approving or adopting, as applicable, the transaction, contract, arrangement, policy, program or other matter giving rise to such Conflict of Interest.

(c) After investigating the proposed transaction, contract, arrangement, policy, program or other matter, the Disinterested ~~members of the Committee~~Directors shall determine whether ICANN PTI can obtain with reasonable efforts a more advantageous transaction, contract, arrangement, policy, program or other matter in a manner that would not give rise to or would alleviate or mitigate a Conflict of Interest. ~~If the Conflicted Person is a Director or Board Liaison, such determination shall be reported to the Disinterested Directors at the next Board meeting and prior to the Disinterested Directors approving or adopting, as applicable, the transaction, contract, arrangement, policy, program or other matter giving rise to such Conflict of Interest.~~

(d) If a more advantageous transaction, contract, arrangement, policy, program or other matter is not reasonably available to ICANN PTI under circumstances not producing a Conflict of Interest, or the transaction, contract, arrangement, policy, program or other matter cannot be modified to alleviate or mitigate a Conflict of Interest, the Disinterested ~~members of the Committee, and where the Conflicted Person is a Director or Board Liaison, the Disinterested~~ Directors shall determine by a majority vote ~~of the applicable Disinterested Directors~~ whether the transaction, contract, arrangement, policy, program or other matter creating the Conflict of Interest is in ICANN's PTI's best interest, for its own benefit, and whether it is fair and reasonable to ICANN PTI. In conformity with those

determinations, the Disinterested ~~members of the Committee or Disinterested~~ Directors, ~~as applicable,~~ shall make its decision as to whether ICANNPTI should enter into the transaction, contract or arrangement or approve the policy, program or other matter.

Section 2.4. Duty to Abstain.

(a) After disclosing the existence of a Potential Conflict, Interested Persons shall refrain from using their personal influence (either at or outside a Board meeting) to influence ICANN'sPTI's handling of the transaction, contract, arrangement, policy, program or other matter.

(b) No Director may vote on, and each Director must abstain from voting on, any matter in which the Director has a Conflict of Interest, ~~except that a Director need not abstain from, and may vote on, whether to accept or to reject a recommendation to the Board by an Independent Valuation Expert contained in a Reasoned Written Opinion from such Independent Valuation Expert regarding a Compensation arrangement for services provided by the Director to ICANN in the Director's capacity as a member of the Board.~~

(c) In the event of such an abstention, the abstaining Director shall state the reason for the abstention, which shall be recorded pursuant to Section 3.1.

(d) ~~Except as otherwise provided in Section 2.4(b) above regarding a compensation arrangement for services provided by the Director to ICANN in the Director's capacity as member of the Board, no~~No Director may participate in Board committee or Board deliberations on any transaction, contract, arrangement, policy, program or other matter in which he or she has a Conflict of Interest without first disclosing the conflict (and otherwise complying with the requirements of this COI Policy) and until a majority of Disinterested ~~members of the Committee or a majority of the Disinterested~~ Directors present agree on whether and in what manner the Conflicted Person may participate.

Section 2.5. Violations of the Conflicts of Interest Policy.

(a) If the Disinterested ~~members of the Committee~~Directors have reasonable cause to believe a Covered Person has failed to disclose a Potential Conflict, the ~~Committee~~Board shall inform the Covered Person, and initiate the procedures described in Sections 2.1, 2.2 and 2.3.

(b) If the Disinterested ~~members of the Committee~~Directors determine that a Director ~~or Board Liaison~~ has intentionally failed to disclose a Potential Conflict, the Disinterested ~~members of the Committee shall make recommendations to the Disinterested Directors for corrective action. The Disinterested Directors shall review the Disinterested members of the Committee's recommendation and~~Directors shall take such corrective action as they deem appropriate,

including, but not limited to, seeking removal of a non-disclosing Director ~~or Board Liaison~~ in accordance with ICANN's PTI's Bylaws and applicable law.

ARTICLE III -- RECORDS OF PROCEEDINGS

Section 3.1. The written or electronic records of the Board ~~and the Committee~~ relating to Conflicts of Interest shall contain:

- (~~i~~a) The names of Covered Persons who disclosed or otherwise were found to have a Potential Conflict in connection with a proposed contract, arrangement, policy, program or other matter;
- (~~i~~b) The nature of the Potential Conflict;
- (~~ii~~c) Any action taken to determine whether a Conflict of Interest was present;
- (~~iv~~d) The ~~Board's or the Committee's, as applicable,~~ Board's decision as to whether a Conflict of Interest in fact existed;
- (~~v~~e) The names of the persons who were present for discussions and votes relating to the transaction, contract, arrangement, policy, program or other matter;
- (~~vi~~f) The content of the discussion, including any alternatives to the proposed transaction, contract, arrangement, policy, program or other matter; and
- (~~vii~~g) A record of any votes taken in connection therewith.

ARTICLE IV – COMPENSATION

Section 4.1. ~~Except to the extent permitted under Section 2.4(b), a~~ A Director who receives Compensation, directly or indirectly, from ICANN PTI for services may not vote on matters pertaining to the ~~Director's~~ Director's Compensation.

Section 4.2. A Director may not vote on matters pertaining to Compensation received, directly or indirectly, from ICANN PTI by a member of the ~~Director's~~ Director's Family or by an individual with whom a Director has a close personal relationship, including, but not limited to, any relationship other than kinship, spousal or spousal equivalent that establishes a significant personal bond between the Director and such other individual that in the judgment of the ~~Committee~~ Board could impair the ~~Director's~~ Director's ability to act fairly and independently and in a manner that furthers, or is not opposed to, the best interests of ICANN PTI.

Section 4.3. No Covered Person who receives Compensation, directly or indirectly, from ICANN PTI, either individually or collectively, is prohibited from providing information to the Board ~~or to any Committee~~ regarding the Covered ~~Person's~~ Person's Compensation.

ARTICLE V -- ANNUAL STATEMENTS

Section 5.1. Each Covered Person shall annually, or promptly upon becoming a Covered Person, sign a Statement which affirms such Covered Person: (i) has received a copy of the COI Policy; (ii) has read and understands the COI Policy; (iii) has agreed to comply with the COI Policy; and (iv) understands ~~ICANN is~~PTI intends to be a tax-exempt organization described in § 501(c)(3) of the Internal Revenue Code and that in order to obtain and maintain its federal tax exemption, ~~ICANN~~PTI must engage primarily in activities which accomplish one or more of ~~ICANN's~~PTI's tax-exempt purposes.

Section 5.2. On an annual basis, all Covered Persons shall disclose on their Statement a list of all organizations in which he or she has a Financial Interest or Duality of Interest.

Section 5.3. On an annual basis, the ~~Committee~~Board shall review the Statements of the Covered Persons to determine whether any Covered Person has a Conflict or Conflicts of Interest that is, or in the aggregate are, so pervasive that the Conflicted Person should no longer serve in his or her respective role.

ARTICLE VI -- PERIODIC REVIEWS

Section 6.1. To ensure ~~ICANN~~PTI operates with the highest levels of integrity and in a manner consistent with its tax-exempt purposes and does not engage in activities that could jeopardize its tax-exempt status, ~~ICANN's Office of the General Counsel and Finance Department~~the Secretary and the Treasurer shall conduct periodic reviews of its purposes and activities.

Section 6.2. These periodic reviews shall, at a minimum, include the following subjects:

- (i) Whether activities carried on by ~~ICANN~~PTI are consistent with and in furtherance of one or more of ~~ICANN's~~PTI's tax-exempt purposes;
- (ii) Whether ~~ICANN~~PTI follows policies and procedures reasonably calculated to prevent private Inurement more than incidental private benefit, excess benefit transactions, substantial lobbying, and participation or intervention in any political campaign on behalf of or in opposition to any candidate for public office;
- (iii) Whether compensation arrangements and benefits are reasonable, are based on appropriate data as to comparability, and are the result of arm's length bargaining; and
- (iv) Whether partnerships, joint ventures, and arrangements with organizations that provide management personnel or management services conform to ~~ICANN's~~PTI's written policies, are properly recorded, reflect reasonable investment or payments for goods and services, further tax-exempt purposes, and do not result in private Inurement more than incidental private benefit, or in an excess benefit transaction.

Section 6.3. When conducting the periodic reviews, ICANNPTI may, but need not, use outside experts and/or advisors. If outside experts and/or advisors are used, their use shall not relieve the Board of its responsibility for ensuring periodic reviews are conducted in the manner prescribed in this Article.

ARTICLE VII – DEFINITIONS

Section 7.1. As used in this COI Policy, the following terms shall have the meanings set forth below.

- ~~(i) "Advisory Committees" means the Governmental Advisory Committee, the At Large Advisory Committee, the Security and Stability Advisory Committee and the Root Server System Advisory Committee.~~
- ~~(ii) "Board" means the ICANN Board of Directors.~~
- ~~(iii) "Board Governance Committee" means the Board Governance Committee of the Board.~~
- ~~(iv) "Board Liaison" shall mean those liaisons to the Board appointed in accordance with ICANN's Bylaws.~~
- (v) "Compensation" includes direct and indirect remuneration as well as gifts or favors that are material in nature or amount. Compensation does not include reimbursement of properly documented travel and other appropriate business expenses.
- ~~(vi)~~ A "Conflict" or "Conflict of Interest" arises when the Board ~~or the Committee, as applicable~~, following the procedures set forth in Articles II and III of this COI Policy, determines that a Covered Person has disclosed a Potential Conflict that may in the judgment of a majority of the Disinterested Directors ~~or Disinterested members of the Board or the Committee, as applicable~~, adversely impact the Covered ~~Person's~~Person's ability to act fairly and independently and in a manner that furthers, or is not opposed to, the best interests of ICANNPTI.
- ~~(vii)~~(c) "Conflicted Person" means a Covered Person who has been determined by the Board ~~or the Committee~~ to have a Conflict of Interest.
- ~~(viii)~~(d) "Covered Person" shall mean an Officer, a Director, ~~Board Liaison~~ or Key Employee of ICANNPTI.
- ~~(ix)~~ A "Director" is any voting member of the Board.
- ~~(x)~~ "Disinterested" means not having a Potential Conflict with respect to a transaction, contract, arrangement, policy, program or other matter being considered by ICANNPTI.
- ~~(xi)~~ "Domestic Partner" shall mean an individual who resides at the same residence as the Covered Person as his or her spousal equivalent.

(~~xii~~) A "Duality of Interest" arises when, with respect to a transaction, contract, arrangement, policy, program or other matter, a Covered Person or a member of a Covered ~~Person's~~Person's Family has a fiduciary relationship with another party to a proposed transaction, contract or arrangement which gives rise to a circumstance in which the fiduciary duties of the Covered Person to ~~ICANN~~PTI and the fiduciary duties of the Covered Person, or the fiduciary duties of the Family member of the Covered Person, to the other party may be in conflict. A Duality of Interest does not constitute a Conflict of Interest if ~~ICANN~~(i) PTI and all other parties to the transaction, contract or arrangement being in possession of all material facts, waive the conflict in writing or (ii) the source of such Duality of Interest is a Cover Person's fiduciary relationship with ICANN.

(~~xiii~~) The "Family" of any Covered Person shall include the Covered ~~Person's~~Person's spouse; Domestic Partner; siblings and their spouses or Domestic Partners; ancestors and their spouses or Domestic Partners; and descendants and their spouses or Domestic Partners. Family shall also include anyone (other than a domestic employee or service provider) who shares the Covered ~~Person's~~Person's home.

(~~xiv~~) A "Financial Interest" exists whenever a Covered Person has or is engaged in discussions to have, directly or indirectly, through business, investment, or Family: (~~ai~~) an ownership or investment interest in any entity with which ~~ICANN~~PTI has a transaction, contract, arrangement, policy, program or other matter; (~~bii~~) a Compensation arrangement with any entity or individual with which ~~ICANN~~PTI has a transaction, contract, arrangement, policy, program or other matter; and (~~ei~~) a potential ownership or investment interest in, or Compensation arrangement with, any entity or individual with which ~~ICANN~~PTI is negotiating a transaction, contract, arrangement, policy, program or other matter. As used herein, "transactions, contracts, and arrangements" include grants or other donations as well as business arrangements, approvals or endorsements. Additionally, as used herein "policies, programs or other matters" include, but are not limited to, the application for or the registration of ~~top-level~~top-level domains. A Financial Interest is a Potential Conflict but is not necessarily a Conflict of Interest. A Financial Interest does not become a Conflict of Interest until the Board ~~or the Committee~~, following the procedures set forth in Articles II and III of this COI Policy, determines that the Financial Interest constitutes a Conflict of Interest. A Director shall not be deemed to have a Financial Interest if the source of such Financial Interest is based on such Director's employment with ICANN, service on ICANN's board of directors or any compensation related to such employment or service.

~~(xv) An "Independent Valuation Expert" means a Person retained by ICANN to value compensation arrangements that: (a) holds itself out to the public as a compensation consultant; (b) performs valuations regarding compensation~~

~~arrangements on a regular basis, with a majority of its compensation consulting services performed for Persons other than ICANN; (c) is qualified to make valuations of the type of services involved in any engagement by and for ICANN; (d) issues to ICANN a Reasoned Written Opinion regarding a particular compensation arrangement; and (e) includes in its Reasoned Written Opinion a certification that it meets the requirements set forth in (a) through (d) of this definition.~~

(k) “ICANN” is the Internet Corporation for Assigned Names and Numbers, a California Nonprofit Public Benefit Corporation that is the sole member of PTI.

~~(xvi)~~ An “Interested Person” is a Covered Person who has a Potential Conflict with respect to a particular transaction, contract, arrangement, policy, program or other matter under consideration by ICANN/PTI.

~~(xvii)~~ “Internal Revenue Code” shall mean the United States Internal Revenue Code of 1986, as amended, or any future revenue statute replacing the 1986 Code.

~~(xviii)~~ “Inurement,” as used in this COI Policy, shall mean: (a) a transaction in which ICANN/PTI provides an economic benefit, directly or indirectly, to or for the use of any Covered Person where the value of that economic benefit exceeds the value of the consideration (including the performance of services) that ICANN/PTI receives in exchange; or (b) any transaction or arrangement by or through which a Covered Person receives a direct or indirect distribution of ICANN's/PTI's net earnings (other than payment of fair market value for property or the right to use property and reasonable compensation for services).

~~(xix)~~ A “Key Employee” is an employee of ICANN/PTI designated as a member of the executive management team of ICANN/PTI, but who is not an Officer or Director.

~~(xx)~~ An “Officer” is an individual holding a position designated as an Officer by ICANN's/PTI's Bylaws or by resolution of the Board ~~and includes, without limitation, the President of ICANN.~~

~~(xxi)~~ A “Person” includes an individual, corporation, limited liability company, partnership, trust, unincorporated association or other entity.

~~(xxii)~~ A “Potential Conflict” means either a Potential Direct Conflict or a Potential Perceived Conflict.

~~(xxiii)~~ A “Potential Direct Conflict” means any one or more of the following: (a) a direct or indirect Financial Interest in a transaction, contract or arrangement being considered by ICANN/PTI, by a Covered Person or a member of a Covered Person's Family; (b) a Duality of Interest by a Covered Person or a member of a

Covered Person's Family with respect to another party to a transaction, contract or arrangement being considered by ICANNPTI that has not been waived in writing by all parties to the transaction, contract or arrangement; or (e~~iii~~) a close personal relationship between the Covered Person, or a member of a Covered Person's Family, with an individual who is, directly or indirectly through business, investment, or Family, a party to a transaction, contract or arrangement being considered by ICANNPTI.

(~~xxiv~~) A "Potential Perceived Conflict" exists when a reasonable person, knowing the relevant facts, could conclude that the Covered ~~Person's~~Person's private interests could adversely impact the Covered Person's ability to act fairly and independently and in a manner that furthers, or is not opposed to, the best interests of ICANNPTI.

(~~xxv~~) "u Regulations" means treasury regulations promulgated under the Internal Revenue Code.

~~(xxvi) "Reasoned Written Opinion" means a written opinion of a valuation expert who meets the requirements of Section 7.1(xv)(a) through (d) of this COI Policy. To be reasoned, the opinion must be based upon a full disclosure by ICANN to the valuation expert of the factual situation regarding the compensation arrangement that is the subject of the opinion, the opinion must articulate the applicable valuation standards relevant in valuing such compensation arrangement, the opinion must apply those standards to such compensation arrangement, and the opinion must arrive at a conclusion regarding whether the compensation arrangement is within the range of Reasonable Compensation for the services covered by the arrangement. A written opinion is reasoned even though it reaches a conclusion that is subsequently determined to be incorrect so long as the opinion addresses itself to the facts and the applicable standards. However, a written opinion is not reasoned if it does nothing more than recite the facts and express a conclusion.~~

(v) "Secretary" means the Secretary of PTI.

(~~xxvii~~) "w Statement" means the annual statement required by Article V hereof.

~~(xxviii) "Supporting Organizations" mean the Address Supporting Organization, the Generic Names Supporting Organization and the Country Codes Name Supporting Organization.~~

(x) "Treasurer" means the Treasurer of PTI.

Section 7.2. Where terms used in this COI Policy, ~~such as Reasonable Compensation (which shall have the meaning set forth in § 53.4958-4(b)(1)(ii) of the Regulations),~~ have a particular meaning under the Internal Revenue Code and/or any Regulations issued thereunder, this COI Policy shall be construed to incorporate that meaning as the context requires.

Section 7.3. All other terms used in this COI Policy shall be given their ordinary, everyday meaning.

